

EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

3	CHRISTOPHER HOWE,)	
	individually and on behalf)	
4	of all others similarly)	
	situated,)	
5)	Case No.
	Plaintiff,)	1:19-cv-01374
6)	Hon. Andrea R.
	vs.)	Wood
7)	Magistrate
	SPEEDWAY LLC and MARATHON)	Judge Hon.
8	PETROLEUM COMPANY,)	Susan E. Cox
)	
9	Defendants.)	

10 The videotaped deposition of CHRISTOPHER
11 HOWE, called by the Defendant for examination,
12 pursuant to Notice, and pursuant to the Rules of
13 Civil Procedure for the United States District
14 Courts, taken before Renee E. Brass, CSR, RPR at
15 111 South Wacker Drive, 47th Floor, Chicago,
16 Illinois, on June 13, 2019, at the hour of
17 10:15 a.m.

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1 PRESENT:

2 STEPHAN ZOURAS, LLP
3 BY: MR. ANDREW C. FICZKO
4 aficzko@stephanzouras.com
5 100 North Riverside, Suite 2150
6 Chicago, IL 60606
7 312.233.1550

8 on behalf of the Plaintiffs;

9 SHOOK, HARDY & BACON, LLP
10 BY: MR. MATTHEW C. WOLFE
11 mwolfe@shb.com
12 111 South Wacker Drive, 47th Floor
13 Chicago, IL 60606
14 312.704.7700

15 on behalf of the Defendant.

16 ALSO PRESENT:

17 David Dominiak, videographer

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23 Reported by: Renee E. Brass, CSR, RPR
24 CSR No. 084-004119 - Expiration Date: May 31, 2021.

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1 MR. WOLFE: Matt Wolfe for defendants,
2 Speedway LLC and Marathon Petroleum Company.

3 MR. FICZKO: Andy Ficzko on behalf of
4 the plaintiffs.

5 THE VIDEOGRAPHER: Thank you. Please
6 proceed.

7 CHRISTOPHER HOWE,
8 having been first duly sworn, was examined and
9 testified as follows:

10 EXAMINATION

11 BY MR. WOLFE:

12 Q. Good morning, Mr. Howe.

13 A. Good morning.

14 Q. Could you state your name for the
15 record, please.

16 A. Christopher Howe.

17 Q. Where do you currently live?

18 A. Bartlett.

19 Q. Can you give me the full address?

20 [REDACTED]

21 [REDACTED]

22 Q. Have you ever had your deposition taken
23 before?

24 A. No, sir.

1 A. Correct.

2 Q. Okay. And do you use the app to figure
3 out how much product you have to pick up?

4 A. No.

5 Q. So how do you determine that?

6 A. Guesstimation.

7 Q. Where did you work before Pugs?

8 A. Speedway.

9 Q. How long were you there?

10 A. A year and six months maybe. It
11 was September '16 to -- I'm sorry. September '15
12 into May of '17.

13 Q. I think you got that exactly right based
14 on the records I have seen.

15 So what was your position at Speedway?

16 A. General manager.

17 Q. Did you start as a general manager?

18 A. Trainee.

19 Q. Okay. So you were hired as a manager
20 trainee?

21 A. Correct.

22 Q. And were you the general manager of a
23 particular store, like a particular Speedway
24 location?

1 A. Before or after?

2 Q. Well, that's -- that's a good question.

3 Sorry that was unclear.

4 So you started as a trainee?

5 A. Correct.

6 Q. And where were you -- where were you

7 located then?

8 A. Glen Ellyn, Illinois.

9 Q. Okay. And was there -- were you working
10 at a store location in Glen Ellyn?

11 A. Yes.

12 Q. And were you reporting to somebody at
13 that location like as a trainee?

14 A. Correct.

15 Q. Okay. How long were you at the Glen
16 Ellyn location?

17 A. Maybe a month.

18 Q. Okay. Can you describe generally what
19 the training consisted of in Glen Ellyn?

20 A. Getting to know the register, food, how
21 to expire food, how to cook food, paperwork, daily
22 paperwork that was -- had to be done.

23 Q. What kind of paperwork?

24 A. As they would call it, end of day.

1 Q. So what does that mean?

2 A. You close-out the previous day and have
3 to enter in numbers to make sure that they married
4 up together.

5 Q. By numbers, you mean like money numbers,
6 inventory?

7 A. Sales numbers.

8 Q. Sales numbers. Okay.

9 After your month at Glen Ellyn, where
10 did you go next?

11 A. Itasca.

12 Q. And what was your position in Itasca?

13 A. Same thing, trainee.

14 Q. Okay. And how long were you in Itasca?

15 A. To October.

16 Q. Was there anything different between
17 what your responsibilities were at Glen Ellyn and
18 Itasca?

19 A. Yes.

20 Q. What was different?

21 A. He basically gave me the store to run as
22 I was an acting GM.

23 Q. When you say "he," who do you mean?

24 A. The GM of that store at the time.

1 Q. Okay. Was that -- do you remember his
2 name?

3 A. Kevin.

4 Q. Okay. Was Kevin present as the GM?

5 A. Yes.

6 Q. But he was kind of stepping back,
7 letting you run the store as if you were the GM?

8 A. Correct.

9 Q. Then was the idea that you would
10 eventually like be the GM of your own store?

11 A. Correct.

12 Q. Okay. Where did you go after Itasca?

13 A. Addison.

14 Q. And when was that?

15 A. October.

16 Q. Of '16?

17 A. '16.

18 Q. Okay. And did you become the GM of the
19 Addison store?

20 A. Yes, I did.

21 Q. So what were your responsibilities as
22 the GM of the Addison store?

23 A. Run the store like it was my own store.

24 Q. Okay. And was that subject to, you

1 required?

2 Q. Both.

3 A. Almost weekly.

4 Q. That Umar would tell you you have to be
5 working off the clock or that you would actually
6 work off the clock?

7 A. That he would say it would be better to
8 work off the clock.

9 Q. Okay. And as a store GM, you clocked in
10 and out in order to get paid, right?

11 A. Correct.

12 Q. Using a time clock?

13 A. Correct.

14 Q. Okay. Was your pay on an hourly basis?

15 A. No.

16 Q. You were paid salary?

17 A. Correct.

18 Q. But you had to clock in and out to show
19 the amount of hours you were on duty at the store?

20 A. Correct.

21 Q. Okay. How often did you speak with
22 Umar?

23 A. Almost daily.

24 Q. In person or by phone or both?

1 A. The biometric system.

2 Q. Okay. This -- so this form says -- it
3 looks to me to be a Speedway form. Is that your
4 understanding as well?

5 A. Correct.

6 Q. Okay. And it says form effective
7 November 1, 2017?

8 A. Correct.

9 Q. Were you working at Speedway on
10 November 1, 2017?

11 A. No.

12 Q. How did you get a copy of the form?

13 A. My girlfriend.

14 Q. Does she still work there?

15 A. No.

16 Q. Did she work there at that time?

17 A. Yeah.

18 Q. This is Athena, right?

19 A. Correct.

20 Q. Okay. How did it come about that -- was
21 this form -- was this taken like as a photograph by
22 somebody?

23 A. Yes.

24 Q. Who took the photograph?

1 what this photograph is of?

2 A. The how you have to punch in and out.

3 Q. Okay. Do you know where this picture
4 was taken?

5 A. I don't remember.

6 Q. Do you know who took it?

7 A. I don't remember.

8 Q. Did you take it?

9 A. I believe not.

10 Q. Did Athena take it?

11 A. That one I'm unsure of.

12 Q. Does this look like the clock that you
13 used to punch in and out when you worked at
14 Speedway?

15 A. Yes.

16 Q. Did you use a clock like this at every
17 location you worked at?

18 A. Yes.

19 Q. And you used a clock like this to punch
20 in and out every day at every location you worked
21 at?

22 A. Yes.

23 Q. Look -- just looking at the picture, I
24 understand that you are not sure where -- where it

1 Q. So how would Rachel communicate to you,
2 you know, here's a new person who we hired?

3 A. Phone call, email, in person.

4 Q. Okay. And then at some point they
5 would, like, show up to work, right?

6 A. Correct.

7 Q. And so how did you know when they were
8 coming in for the first time?

9 A. Email.

10 Q. From Rachel?

11 A. Correct.

12 Q. And so on that first day when the new
13 employee came in, what would you do?

14 A. Had to punch them in.

15 Q. Okay. And that was using the time
16 clock?

17 A. Correct.

18 Q. Okay. We'll go to that in a minute.

19 At the end and under I at the bottom
20 there it says: All other similarly situated
21 employees who worked for defendants during the
22 relevant period of time.

23 Do you have an understanding of what
24 that means?

1 A. Yes.

2 Q. Can you explain?

3 A. It means everyone that was in the same
4 situation I was at the time of this period.

5 Q. By "same situation," do you mean clocked
6 in and out using one of the clocks in the photo
7 that we talked about?

8 A. Yes.

9 MR. WOLFE: Okay. We have been going
10 about an hour. Do you want to take a break
11 or do you want to keep going?

12 MR. FICZKO: Use the restroom real
13 quick.

14 MR. WOLFE: Sure. Let's take a quick
15 break.

16 THE VIDEOGRAPHER: Going off the
17 record at 11:13 a.m.

18 (A recess was had.)

19 THE VIDEOGRAPHER: Back on the record
20 at 11:20 a.m.

21 BY MR. WOLFE:

22 Q. Mr. Howe, could you go back to the
23 picture of the time clock that we were looking at.

24 It's the very last page of Exhibit 1.

1 Q. If -- like if somebody -- so let's say
2 somebody forgot to punch in and they punched in
3 45 minutes late, could you change it to punch in at
4 the right time?

5 A. Correct.

6 Q. If somebody forgot to punch in or out
7 entirely, you could go in and edit to put in the
8 correct time?

9 A. Correct.

10 Q. Okay. When you got new employees, did
11 somebody have to show them how to use the clocks?

12 A. Yes.

13 Q. Who?

14 A. Myself.

15 Q. So you showed the new employees how to
16 use the clocks?

17 A. Correct.

18 Q. Did you enroll them into the clock so
19 that they would have their employee ID associated
20 with their finger?

21 A. Correct.

22 Q. Do you remember how that worked?

23 A. Yes and no.

24 Q. Tell me what you remember about it.

1 A. I believe I would have to hit F1 and
2 that would be -- that would bring up a screen of
3 different things you could do. You would have to
4 hit a certain number to do new enrollment, type in
5 their employee number, and then when you hit the
6 checkmark, it would ask you to put down your left
7 index finger, and if you didn't have it on there
8 tight enough, it would tell you to put it -- push
9 down harder. Tell you to lift it up, tell you to
10 put it down three times. Then it would ask you to
11 do your right index finger, same thing, and then
12 now -- and then it would say you are now stored.

13 Q. And then once that information was
14 stored, could the employee clock in and out simply
15 by putting their finger on the clock?

16 A. Correct.

17 Q. Let's look at this. This is going to be
18 Exhibit 3.

19 (Exhibit 3 marked for
20 identification.)

21 BY MR. WOLFE:

22 Q. So this is a Speedway TimeLink. Do you
23 remember ever seeing a document or a document like
24 that before?

1 A. No, sir.

2 Q. Okay. Let's go to the third page of it.

3 It says 3778 at the very bottom under the 3. So
4 this describes the enrollment process, and it seems
5 to me like you remembered it really well.

6 Do you see anything on here that's
7 inconsistent with the enrollment process as you
8 remember doing it?

9 A. The enrollment -- enroll your employees
10 is pretty accurate.

11 Q. Okay. Do you see anything significant
12 that differs from what you remember?

13 A. In the enrollment?

14 Q. Yeah.

15 A. No.

16 Q. Did you ever delete employees from the
17 clock?

18 A. No.

19 Q. Did you ever have an employee leave
20 Speedway while you were a GM, an employee who
21 reported to you?

22 A. Correct.

23 Q. But you did not delete them from the
24 clock when they left?

1 A. No.

2 Q. Would you know how to delete an employee
3 from the clock?

4 A. No.

5 Q. Did you ever have an employee who
6 couldn't use the clock because, you know, their --
7 their finger just wouldn't work on it?

8 A. Yes.

9 Q. What did you do then?

10 A. You had to edit in TimeLink website.

11 Q. On the back end?

12 A. Correct.

13 Q. Using the computer?

14 A. Correct.

15 Q. How many employees did you have who
16 couldn't use the clock?

17 A. One.

18 Q. What was -- what was that employee's
19 name?

20 A. We called her CeCe.

21 Q. Okay. Did she work at Addison the whole
22 time you were there?

23 A. We let her go eventually.

24 Q. Okay. Do you know approximately when

1 Q. But you did not take them?

2 A. No.

3 Q. Okay. Besides the break feature, are
4 there any other features on the clock that you are
5 aware of that anyone at Speedway, you or the people
6 you supervised or anybody else would have used?

7 A. No.

8 Q. Okay. What are you -- what are you
9 suing for in this case?

10 A. I am suing for Speedway and Marathon to
11 abide by the law.

12 Q. And the law that you want Speedway and
13 Marathon to abide by is the BIPA law?

14 A. Correct.

15 Q. You worked for Speedway, right?

16 A. Correct.

17 Q. Why did you sue Marathon Petroleum
18 Company?

19 MR. FICZKO: Objection, seeks a legal
20 conclusion.

21 BY MR. WOLFE:

22 Q. You can answer.

23 A. Marathon owns Speedway.

24 Q. So your understanding is Marathon

1 A. After -- yes.

2 Q. How much are you looking for?

3 A. After doing some research and Googling
4 things and looking, my understanding it could be
5 anywhere from 1,000 to maybe 5,000.

6 Q. Would you take \$1,000 to settle the
7 case?

8 A. I don't know.

9 Q. Would you take \$5,000?

10 A. I don't know.

11 Q. You were paid a salary when you were a
12 GM at Speedway, correct?

13 A. Correct.

14 Q. Do you think Speedway should have paid
15 you more in exchange for having you put your finger
16 on the time clock every day?

17 MR. FICZKO: Objection, seeks a legal
18 conclusion.

19 THE WITNESS: No.

20 BY MR. WOLFE:

21 Q. Is it your position that Speedway didn't
22 disclose to you that the time clock was relying on
23 scanning your finger to track your hours?

24 A. I'm sorry?

1 Q. Is your -- are you saying by filing this
2 lawsuit that Speedway and Marathon didn't disclose
3 to you that the time clock was tracking your hours
4 by having you put your finger on it?

5 MR. FICZKO: Objection, seeks a legal
6 conclusion.

7 THE WITNESS: Correct.

8 BY MR. WOLFE:

9 Q. But you put your finger on the clock
10 every day?

11 A. It was required.

12 Q. Different question.

13 My question is did you not understand
14 that when you put your finger on the clock every
15 day that it was relying on, you know, the ridges
16 and marks on your finger to identify you and track
17 your hours?

18 A. Did I not understand that?

19 Q. Yeah.

20 A. No, I understood that.

21 Q. And you continued to do it every day?

22 A. It was required.

23 Q. Is there something that you think
24 Speedway should have done differently that would

1 have, you know, taken away the need for you to file
2 the lawsuit?

3 MR. FICZKO: Objection, seeks a legal
4 conclusion.

5 THE WITNESS: Yes.

6 BY MR. WOLFE:

7 Q. What do you think Speedway should have
8 done differently?

9 A. Told me what they were doing with my
10 personal information.

11 Q. So that's -- I'm going to -- taking that
12 assumption, okay, let's say that Speedway should
13 have told you what they were doing with your
14 personal -- with your personal information. Would
15 you have then done something differently?

16 MR. FICZKO: Objection, hypothetical.

17 THE WITNESS: If they would have told
18 me?

19 BY MR. WOLFE:

20 Q. Yeah.

21 A. No.

22 Q. You wouldn't have quit?

23 A. No.

24 Q. You wouldn't have asked for more money?

1 A. Yes.

2 Q. So how did they keep track of your time?

3 A. Maybe it -- maybe it was good faith
4 then, back then. I'm not -- I'm not -- maybe it
5 was -- maybe we had a paper one. I -- you're --

6 Q. Long time ago I know.

7 A. -- you're talking 1995. I don't know.

8 Q. But it wasn't a finger scan?

9 A. No, sir.

10 Q. Have you ever worked anywhere besides
11 Speedway that had a finger scan time clock?

12 A. No, sir.

13 Q. Ms. Wagner works at 7-Eleven now?

14 A. Yes.

15 Q. Do they use a finger scan time clock?

16 A. I don't know.

17 Q. You -- you understand you are the class
18 representative in this case, right?

19 A. Correct.

20 Q. What does that mean to you?

21 A. That I'm responsible for the actions of
22 the class. I'm looking out for their best
23 interest.

24 Q. And you are aware that you're seeking

1 damages on behalf of all of these other class
2 members, might be thousands of people?

3 A. Correct.

4 Q. Are their damages the same as yours?

5 MR. FICZKO: Objection, seeks a legal
6 conclusion.

7 THE WITNESS: Yes.

8 BY MR. WOLFE:

9 Q. And is that because the people in the
10 proposed class all used the clock in the same
11 manner you did?

12 A. Yes.

13 MR. FICZKO: Same objection. Sorry.

14 BY MR. WOLFE:

15 Q. When you applied to work at Speedway,
16 did you have to provide your Social Security
17 number?

18 A. Yes.

19 Q. Your birthday?

20 A. Yes.

21 Q. Your address?

22 A. Yes.

23 Q. To get paid by Speedway, you had to give
24 them your bank information, right?

1 BY MR. WOLFE:

2 Q. Yeah. Who would be in the class? If
3 the -- you know, the Court hasn't certified the
4 class, but...

5 A. Myself.

6 Q. Uh-huh.

7 A. And every employee up until they
8 released that paper.

9 Q. Up until they put a policy in place?

10 A. Correct.

11 Q. And when you say "they," you mean
12 Speedway?

13 A. Speedway and Marathon.

14 Q. Okay. Do you know -- and your position
15 is that Speedway -- Marathon is being sued because
16 Marathon owns Speedway?

17 MR. FICZKO: Objection, seeks a legal
18 conclusion.

19 THE WITNESS: Yes.

20 BY MR. WOLFE:

21 Q. Now, the class -- the class definition
22 in the complaint, it says: All individuals who
23 worked for defendants in the State of Illinois who
24 had their fingerprints collected, captured,

1 Marathon or any facts supporting the idea that
2 Marathon collected, captured, received, otherwise
3 obtained or disclosed fingerprints?

4 MR. FICZKO: Same objection, seeks a
5 legal conclusion.

6 THE WITNESS: No.

7 BY MR. WOLFE:

8 Q. There are gas stations out there branded
9 Marathon gas station, right?

10 A. Correct.

11 Q. Do you have -- do you have any knowledge
12 of what kind of timekeeping system they use?

13 A. No.

14 Q. The people who worked for you at
15 Addison, your employees, do you remember like what
16 their title was? Is it associate, something like
17 that?

18 A. I believe, yeah, just sales associate.

19 Q. Okay. So you -- you were, I think, a
20 store manager, and, like, a store manager trainee,
21 those were your positions there?

22 A. Yes. Started at -- they call it GMT,
23 store manage trainee, and then GM.

24 Q. Okay. So there's the GM. There's, I

1 guess, there's GM trainees or whatever you want to
2 call it. There's the associates.

3 Are there any other class of employee
4 that you know that would have used the clocks?

5 A. Assistants.

6 Q. So what's an assistant?

7 A. Assistant store manager.

8 Q. Okay. Anybody else?

9 A. Shift lead.

10 Q. I imagine a shift lead is what it sounds
11 like?

12 A. Correct.

13 Q. So it's somebody who is not a manager,
14 but is like a leader of a certain shift?

15 A. Correct.

16 Q. Okay. When the manager is not there?

17 A. Or when the manager is there.

18 Q. Okay. Any other category of employees
19 that you can think of?

20 A. Right now, no. They've opened a couple
21 different things, so I don't know.

22 Q. So your position is all those kinds of
23 employees all had to use these clocks so they all
24 should be in the class?

1 employees can get paid?

2 A. Correct.

3 Q. Do you know one way or the other if
4 every Speedway location in Illinois used a time
5 clock like the one we talked about?

6 A. I know a lot of them did.

7 Q. And how do you know that?

8 A. Being in different stores.

9 Q. And specifically you would need to be in
10 the back -- back room at those stores to see the
11 clock, right?

12 A. Correct.

13 Q. About how many stores have you been in
14 the back room of in Illinois?

15 A. Maybe seven-ish.

16 Q. What's your fee arrangement with the
17 Stephan Zouras firm?

18 A. I don't know.

19 Q. Have you paid them anything?

20 A. No.

21 Q. Is it your understanding that they're
22 working on a contingency fee?

23 A. Yes.

24 Q. If you recover money or the class